REMARKS

Claims 1-28 are pending. Reconsideration and allowance of all pending claims are respectfully requested in light of the following remarks. It will be recognized that only those amendments necessary for placing all of the claims pending this application in condition for allowance have been made hereinabove. Therefore, Applicant respectfully requests that all of the claim amendments be entered.

Claim Objections

Claim 15 stands objected to because of certain informalities. In response, Applicant has corrected the informality by replacing "emptily" with "empty" and respectfully request that the objection be withdrawn.

Rejections under 35 U.S.C §101

Claims 1-28 stand rejected under 35 U.S.C. §101 because the claimed invention is directed to non-statutory subject matter. In response, Applicant has amended the claims to overcome the rejection and therefore respectfully requests that the rejection be withdrawn.

Rejections under 35 U.S.C. §112, first paragraph

Claims 1-28 stand rejected under 35 U.S.C. §112, first paragraph, as failing to comply with the written description requirement. In response, Applicant has amended the claims to remove the phrase "selectively executing" from the claims and therefore respectfully requests that the subject rejection be withdrawn.

Rejections under 35 U.S.C. §112, second paragraph

Claims 1-28 stand rejected under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter that Applicant regards as the invention. In response, Applicant has amended the claims to remove the phrase "selectively executing" from the claims. Additionally, Applicant has amended claim 3 to remove the seemingly contradictory limitations previously contained therein. In view of the foregoing, Applicant respectfully requests that the subject rejection be withdrawn.

Rejections under 35 U.S.C § 103(a)

Claims 1-28 stand rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 5,966,547 to Hagan et al. ("Hagan") in view of Parlante (Linked List Basics). Applicant respectfully

traverses the subject rejection on the grounds that the cited references are defective in establishing a prima facie case of obviousness with respect to the pending claims.

As the PTO recognizes in MPEP § 2142:

> *The examiner bears the initial burden of factually supporting any prima facie conclusion of obviousness. If the examiner does not produce a prima facie case, the applicant is under no obligation to submit evidence of nonobviousness.*

It is submitted that, in the present case, the Examiner has not factually supported a prima facie case of obviousness for the following reasons.

The Hagan and Parlante references cannot be applied to reject independent claims 1, 11, and 15 under 35 U.S.C. § 103 because, even when combined, the references do not teach the claimed subject matter. In particular, the cited references fail to teach or suggest at least the following element as recited in each of independent claims 1, 11, and 15:

> *executing an add to end function for adding a new element to the queue even when the queue is in a locked state in which a queue head pointer is null and a queue tail pointer does not point to the queue head pointer*

The Examiner has conceded that Hagan fails to teach this element. In the "Response to Arguments" section of the present Office action, beginning on page 4, the Examiner concedes that "Applicant correctly points out that Parlante does not explicitly teach how to handle this boundary case." The Examiner goes on to state that Parlante "alludes that special attention is necessary to improve proper operation" in a boundary case and from there leaps to the conclusion that "[i]t would have been obvious to a person having ordinary skill in the art to implement the boundary case handling that is claimed in claim 1." Applicant respectfully traverses the Examiner's position in this regard and submits that, even assuming *arguendo* that the Examiner's characterization of the teachings of Parlante is correct, the mere recognition of a problem, without more, does not render a particular solution to that problem obvious. Indeed, if in fact the solution were obvious, it is probable that the solution itself would also have been identified by Parlante.

Thus, for this mutually exclusive reason, the Examiner's burden of factually supporting a *prima facie* case of obviousness with respect to the pending claims has clearly not been met, and the rejection under U.S.C. §103 should be withdrawn.

Conclusion

It is clear from the foregoing that all of the pending claims are in condition for allowance. An early formal notice to that effect is therefore respectfully requested.

Respectfully submitted,

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February 5, 2007

Ellen Lovelace